IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE TWENTY NINTH DAY OF NOVEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE L.NARASIMHA REDDY

WRIT PETITION NO : 21228 of 2004

Between:

Smt. Alivelamma, W/o.K.Angineyulu,
Papampalli village, Kalyandurg (M), Anantapur Dist.

..... PETITIONER

AND

The Revenue Divisional officer, Dharmavaram,

Anantapur Dist.

.....RESPONDENT

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ, order, or direction, more particularly writ of calling for record with regard to and in connection with the proceedings No.Rc.2525/04/F, dated 30-10-2004, and quash the same

Counsel for the Petitioner:KOTHAPALLI RAM MOHAN CHOWDARY

Counsel for the Respondent : GP FOR CIVIL SUPPLIES

The Court, at the stage of admission, made the following :

ORDER:

Petitioner was appointed as a Fair Price Shop Dealer, vide proceedings, dated 14.12.1997. Her authorization was suspended through proceedings, dated 30.10.2004, on certain allegations, on the basis of a report of the Mandal Revenue Officer, dated 12.10.2004. The same is challenged by the petitioner.

Heard the learned counsel for the petitioner and the learned Government Pleader for Civil Supplies.

Learned counsel for the petitioner submits that under Clause 5 (4) of the A.P. State Public Distribution System Control Order, 2001, (for short 'the Control Order') the issuance of notice is mandatory, and the present order, which was passed without issuing notice, cannot be sustained in law. He places reliance upon a Judgment of this Court in ***B.VENKATESWARA RAO V. THE REVENUE DIVISIONAL OFFICER.***

Learned Government Pleader for Civil Supplies, on the other hand, submits that the suspension in question, was ordered as a measure, pending enquiry, and as such, notice is not mandatory. Referring to certain decided cases, he submits that in such an event, issuance of show cause notice is not mandatory. He further contends that the appointment of the petitioner is only temporary in nature and she is not vested with any right.

From a perusal of the appointment order, dated 14.12.1997, it is evident that though the petitioner is appointed as a temporary dealer, her appointment is not restricted to any particular period. She has been continuing since last seven years. Therefore, it is too difficult to treat the appointment of the petitioner as a temporary measure.

Clause 5 (4) of the Control Order is identical to Clause 3 (4) of Andhra Pradesh Scheduled Commodities (Regulation or Distribution by Card System) Order 1973. Interpreting the same, this Court in ***B.VENKATESWARA RAO***'s case (1 supra) held that issuance of notice contemplated under that Clause is mandatory, before the authorization of a fair price shop dealer is suspended. The question as to whether the suspension is resorted to, as a measure, pending enquiry, or as a substantive punishment, would depend on the text of the order passed in the relevant case. In the present case, the expression used is that 'the petitioner is temporarily removed as fair price shop dealer'. It partakes the character of almost a substantive punishment, though it is observed that the measure is resorted to, until further orders. Further, in the very District, the appointing authorities have been issuing notices contemplated under Clause 5(4) of the Control order, whereas in the present case, the suspension is ordered straight away.

For the foregoing reasons, the order of suspension passed against the petitioner is set aside. It is, however, left open to the respondent to issue notice and to proceed further either to suspend authorization or to cancel it.

Accordingly, the writ petition is allowed. There shall be no order as to costs.

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L.NARASIMHA REDDY, J

Dated : 29th November, 2004

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To

1 The Revenue Divisional officer, Dharmavaram,

Anantapur Dist.

2 2 CCS to the G.P. for Civil Supplies, High Court of A.P.,

Hyderabad.

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